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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/719,389  | 11/20/2003  | Jeffery J. Wright    | 03269.0032U1        | 2578             |
| 23859 7590 12/12/2007<br>NEEDLE & ROSENBERG, P.C.<br>SUITE 1000<br>999 PEACHTREE STREET<br>ATLANTA, GA 30309-3915 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| JUSKA, CHERYL ANN   |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 1794  |             |                      |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
| 12/12/2007  |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/719,389

**Applicant(s)**

WRIGHT, JEFFERY J.

**Examiner**

Cheryl Juska

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 September 2007.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 21-30, 53 and 54 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-8, 21-30, 53 and 54 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/55/rev)  
Paper No(s)/Mail Date 9/20/06, 9/20/06, 12/20/06  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination (RCE) 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114.

### ***Response to Amendment***

2. Applicant's amendment filed with the RCE on September 24, 2007, has been entered. Claims 9-20 and 31-52 have been cancelled. Thus, the pending claims are 1-8, 21-30, 53, and 54.

3. Applicant's arguments with respect to the obviousness rejection of the claims over the Kjellqvist reference ( US 6,187,424) have been considered and found persuasive. Specifically, Kjellqvist's teaching of the ratio of polymers A, B, and C, in conjunction with the teaching of said polymers weight percent, would not lead one to modify the polymer content from less than 75% by weight to at least 80% by weight, as presently claimed by applicant. See Amendment, paragraph spanning pages 8-9. Hence, the prior art rejections set forth in sections 4-6 of the last Office Action (Final Rejection mailed 09/22/06) are hereby withdrawn.

4. Despite this advance, the application is not in condition for allowance in view of the new rejections set forth below.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8, 21-30, 53, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0134486 issued to Brumbelow et al.

Brumbelow discloses a carpet and method of making said carpet, wherein the carpet comprises a primary backing, a plurality of fibers attached to the primary backing, an adhesive backing, and an optional secondary backing (abstract and claim 2). The adhesive backing material comprises at least one homogeneously branched ethylene polymer (HBEP) (section [0029] and claim 2), preferably a substantially linear ethylene polymer (SLEP) (section [0080]). Additionally, said adhesive backing and/or optional secondary backing contain a blowing agent to produce a foamed backing (section [0029] and claim 2). The HBEP can be used alone (i.e., 100%) or can be blended or mixed with one or more other polymeric materials (section [0103]). The HBEP polymer composition may be modified with a maleic anhydride grafted ethylene polymer (sections [0140] and [0141]) and a filler (section [0149]). The HBEP polymer may have a density ranging from 0.875 – 0.910 g/cc (section 0090).

Thus, Brumbelow teaches the presently claimed invention with the exception of recited thickness of greater than 0.075 inches (1.9 mm). [Note the claim recitation to cushion backing is merely descriptive of intended use.] However, it would have been readily obvious to one skilled

in the art to modify the thickness of the foam layer of Brumbelow. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. An increase in thickness would result in an increase in material costs, an increase in resiliency, and/or an increase in absorption properties (e.g., acoustic, thermal, impact). Therefore, claims 1, 3-8, and 53 are rejected as obvious over the cited Brumbelow reference.

With respect to claim 2, Brumbelow is silent regarding crosslinking. As such, one can presume the foam backing is substantially uncrosslinked. Hence, claim 2 is also rejected.

7. Regarding claims 21-30 and 54, Brumbelow fails to explicitly teach the addition of a resilient filler material, such as EPDM, NBR, or SBR. However, it is argued said claims are obvious over the cited prior art. Specifically, it is well known in the art to add such resilient polymers to polyolefin compositions in order to improve impact resistance. Applicant is hereby given Official Notice of this fact. The examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. As such, it would have been readily obvious to one of ordinary skill in the art to add a resilient material to the invention of Brumbelow in order to improve impact resistance of the foam layer. Therefore, claims 21-30 and 54 are rejected.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794